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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 Global BTG LLC,) CV 11-1657 RSWL (RCGx)
12 Plaintiff,)
13 v.) **ORDER re: Defendant's**
14 National Air Cargo, Inc.,) **Motion to Dismiss**
15 Defendant.) **Plaintiff's First**
16) **Amended Complaint [27]**

17 Before the Court is Defendant National Air Cargo,
18 Inc.'s ("Defendant") Motion to Dismiss Plaintiff Global
19 BTG LLC's ("Plaintiff") First Amended Complaint [27]
20 and Defendant's Request for Judicial Notice in support
21 of its Motion [28]. The Court having reviewed all
22 papers submitted pertaining to this Motion and having
23 considered all arguments presented to the Court, **NOW**
24 **FINDS AND RULES AS FOLLOWS:**

25 The Court hereby **DENIES** Defendant's Request for
26 Judicial Notice and **DENIES** the Motion to Dismiss
27 Plaintiff's First Amended Complaint.

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1 A. Judicial Notice

2 As a preliminary matter, Defendant filed a request
3 for this Court to take judicial notice of three
4 documents in support of its Motion to Dismiss: (1) the
5 draft Letter of Intent ("LOI"), (2) Plaintiff's
6 certified Articles of Organization, and (3) a printout
7 of an Internet search for business entities on the
8 California Secretary of State website. Generally, a
9 court may not consider material beyond the complaint in
10 ruling on a Rule 12(b)(6) motion. See Fed. R. Civ. P.
11 12(b)(6). However, a court may take judicial notice of
12 facts that are "(1) generally known within the
13 territorial jurisdiction of the trial court, or (2)
14 capable of accurate and ready determination by resort
15 to sources whose accuracy cannot reasonably be
16 questioned." Fed. R. Evid. 201(b). To the extent that
17 the contents in the documents are in dispute, "such
18 matters of controversy are not appropriate subjects for
19 judicial notice." U.S. v. Southern Cal. Edison Co.,
20 300 F. Supp. 2d 964 (E.D. Cal. 2004) (quoting Del
21 Puerto Water Dist. v. U.S. Bureau of Reclamation, 271
22 F. Supp. 2d 1224 (E.D. Cal. 2003)).

23 Pursuant to this standard, the Court hereby **DENIES**,
24 Defendant's Request for Judicial Notice of the draft
25 LOI referred to in Plaintiff's First Amended Complaint.
26 The Court finds that the Parties disagree as to which
27 document is the actual draft LOI, therefore such
28 disputed matters are not appropriate subjects for

1 judicial notice.

2 The Court also **DENIES as Moot** Plaintiff's Request
3 for Judicial Notice of (1) Plaintiff's certified
4 Articles of Organization, and (2) a printout of an
5 Internet search for business entities on the California
6 Secretary of State website. The Court finds that it
7 previously ruled on this matter on June 29, 2011.

8 B. Motion To Dismiss

9 The Court **DENIES** Defendant's Motion to Dismiss
10 Plaintiff's First Amended Complaint because Plaintiff
11 has pled sufficient facts to support its breach of
12 contract claim. Pursuant to Federal Rule of Civil
13 Procedure 12(b)(6), the Court must presume all factual
14 allegations of the complaint to be true and draw all
15 reasonable inferences in favor of the non-moving party.
16 Klarfeld v. United States, 944 F.2d 583, 585 (9th Cir.
17 1991). "While a complaint attacked by a Rule 12(b)(6)
18 motion to dismiss does not need detailed factual
19 allegations,[it]. . . requires more than labels and
20 conclusions, and a formulaic recitation of the elements
21 of a cause of action will not do." Bell Atl. Corp. v.
22 Twombly, 550 U.S. 544, 553-556 (2007). However, a
23 party need not state the legal basis for his claim, but
24 only the facts underlying it. McCalden v. California
25 Library Ass'n, 955 F.2d 1214, 1223 (9th Cir. 1990).

26 Previously, on February 24, 2011, Plaintiff brought
27 a breach of contract claim and Defendant filed a Motion
28 to Dismiss on the ground that Plaintiff lacked standing

1 and capacity to bring this Action. On June 29, 2011,
2 this Court granted Defendant's Motion to Dismiss and
3 issued an Order [19] holding that the Complaint failed
4 to allege sufficient facts showing that Plaintiff had
5 the capacity to sue. The Court intended to hold that
6 Plaintiff failed to allege sufficient facts to support
7 a showing that it had capacity to enforce the contract
8 with Defendant. Due to this Court's unfortunate choice
9 of language, the Parties were misled as to the Court's
10 intended meaning of capacity to sue.

11 In fact, the Court finds that Plaintiff had
12 capacity to sue at all times relevant to this Action.
13 Pursuant to Federal Rule of Civil Procedure, Rule 17,
14 the "capacity to sue or be sued shall be determined by
15 the law of the state in which the district court is
16 held." Fed. R. Civ. P. 17. In this case, the Court
17 finds that Plaintiff had the capacity to sue at all
18 times subsequent to July 20, 2010 when it filed its
19 Articles of Organization with the Nevada Secretary of
20 State. Cal. Corp. Code § 17003(b)(stating that a
21 Limited Liability Company ("LLC") "organized under this
22 title shall have . . . the power to" sue or be sued).

23 Although Plaintiff did not exist as a legal entity
24 at the time the contract was entered into, Plaintiff
25 has pled sufficient facts showing its authority to
26 enforce the contract. The Court finds that Plaintiff
27 has pled sufficient facts showing its ability to
28 enforce the contract through the doctrine of LLC by

1 estoppel.

2 California has applied the traditional corporate
3 formation doctrines to LLCs. 02 Development, LLC v.
4 607 South Park, LLC, 159 Cal. 4th 609, 612 (2008).
5 Additionally, courts have long held that if a party
6 contracts with a corporation, that party is estopped
7 from denying its existence. James D. Cox and Thomas
8 Lee Hazen, 1 Treatise on the law of Corporations § 6:12
9 (3rd ed. 2011); see also Home Owners' Loan Corp. v.
10 Gordon, 36 Cal. App. 2d 189, 192 (Cal. App. 3 Dist.
11 1939) (stating that a long line of authorities
12 establishes that a defendant is estopped from denying a
13 corporation's existence in an action to enforce a
14 contract when a defendant contracts with a plaintiff as
15 a corporation). According to the First Amended
16 Complaint, Defendant contracted with Plaintiff, in
17 Plaintiff's capacity as a LLC, thus Defendant is now
18 estopped from denying Plaintiff's existence.

19 In sum, this Court finds that Plaintiff has pled
20 sufficient facts in its First Amended Complaint to
21 support its breach of contract claim. Though Plaintiff
22 was not a validly formed LLC at the time of
23 contracting, the Court finds that the First Amended
24 Complaint alleges facts necessary to support a LLC by
25 estoppel theory. Therefore, Plaintiff pleads
26 sufficient facts to constitute a cognizable legal
27 theory and should not be dismissed pursuant to Federal
28 Rule of Civil Procedure, Rule 12(b)(6).

